

OFFICE OF THE GENERAL COUNSEL
Division of Operations-Management

MEMORANDUM OM 98-67

August 13, 1998

TO: All Regional Directors, Officers-in-Charge
and Resident Officers

FROM: Richard A. Siegel, Associate General Counsel

SUBJECT: Settlement Stipulations in Formal Compliance Cases

A question has been raised regarding the wording found in the Compliance Manual and currently used by many Regions for formal settlement stipulations providing for installment payment plans. Specifically, paragraph 11 of Appendix 9, *Stipulation Consenting to the Amount of Backpay*, provides that the stipulation is of no effect until approved by the Board.¹ Where the actual installment schedule contained in the settlement requires payments to begin upon the execution of the Stipulation or on a date preceding the Board's approval of the settlement, there is a concern that such language may be ambiguous. Without clarifying the language, it could be argued that we are misleading the respondents as to the potential consequences of their failure to comply with the terms of the settlement while the matter is pending before the Board. Should a respondent fail to make installment payments in advance of the Board's approval, the acceleration clause of the agreement (paragraph 8(a)) may be interpreted to make the entire obligation immediately due and owing, thereby subjecting respondent to contempt and collection proceedings. With the current language, Respondent could take the position that it is under no obligation to comply with the terms of the settlement until the Board has approved its terms.

To address this issue, the second sentence in paragraph 11 of Appendix 9, *Stipulation Consenting to the Amount of Backpay*, Schedule for Payment and the Entry of A Supplemental Board Order and Consent Judgment, is revised as follows:

The Stipulation is subject to the approval of the Board and it shall be **effective *nunc pro tunc* to the date of execution of the Stipulation, immediately upon approval by the Board.**

¹ Paragraph 11 of the sample settlement stipulation currently includes the following sentence: The stipulation is subject to approval of the Board and it shall be of no force and effect until the Board has granted such approval.

Thus, the effect of this change in language would be to put a Respondent on notice that it may be subject to contempt proceedings if, upon approval of the settlement by the Board, compliance with the terms of the settlement has not been achieved.

In addition, since this type of formal stipulation is now submitted by the Region directly to the Board, approval by the General Counsel is no longer required. Accordingly, Appendix 9 is also amended to eliminate signature lines for recommendation to the General Counsel and for his approval

If you have further questions about this memorandum, please contact your Assistant General Counsel, Deputy AGC or the Contempt Litigation and Compliance Branch.

R.A.S.

cc: NLRBU

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